

Matter of: Fisons Instruments--Reconsideration
File: B-254939.2
Date: December 8, 1993

Graham Gibson for the protester,
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq.,
Department of the Interior, for the agency.
Peter A. Iannicelli, Esq., and Linda C. Glass, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Dismissal of protest for failure to comment on agency report or to inform General Accounting Office (GAO) of continuing interest in protest within 10 working days after agency report due date is affirmed despite protester's assertion that it did not receive GAO acknowledgment notice stating 10-day deadline; requirement for timely communication to GAO after report receipt is set forth in Bid Protest Regulations, 4 C.F.R. part 21 (1993), which are published in Federal Register and the Code of Federal Regulations, and protesters are charged with notice of their contents, and protester otherwise knew or should have known of requirement.

DECISION

Fisons Instruments requests reconsideration of our November 8, 1993, dismissal of its protest alleging that the specifications in request for proposals No. 3-4787, issued by the United States Geological Survey for an inductively coupled plasma-mass spectrometer, were overly restrictive. We dismissed Fisons's protest because the protester did not file with our Office written comments on the agency's administrative report, or a written statement of continued interest in the protest, within 10 working days of the due date for receipt of the report, as required by our Bid Protest Regulations.

We affirm the dismissal.

Fisons's protest was filed in our Office on September 16, 1993. On September 17, we sent Fisons a standard acknowledgment notice informing it of the requirement under our Regulations, 4 C.F.R. § 21.3(j) (1993), to submit

written comments or advise our Office to decide the protest on the existing record within 10 working days after receipt of the report. The notice included the date the report was due--October 22, 1993--and advised that we would assume that Fisons received a copy of the report on the scheduled due date. The acknowledgment further advised the protester to notify us if the report was not received on time, and warned that unless we heard from the protester within 10 working days of the report due date, we would dismiss the protest. We received the agency report on October 21, and dismissed the protest on November 8, 2 working days after Fisons's comments were due. We received no communication from Fisons until a representative of the firm telephoned our Office on November 23, indicating that our dismissal had been received and arguing that the dismissal was unwarranted.

In its request for reconsideration, Fisons states that it received the agency's report on October 22 and that it filed its comments with the Department of the Interior, but not our Office, within 10 working days on November 4. Fisons argues that it never received our September 17 acknowledgment and, therefore, did not know that its comments were to be filed in the General Accounting Office (GAO) within the 10-day period.

The filing deadlines in our Regulations are prescribed under the authority of the Competition in Contracting Act of 1984 (CICA); their purpose is to enable us to comply with the statute's mandate that we resolve bid protests expeditiously. 31 U.S.C. § 3554(a)(1) (1988); Discount Mach. & Equip., Inc.--Recon., B-239104.2, Aug. 6, 1990, 90-2 CPD ¶ 106. It is not our policy to reopen a protest file where the protester has failed to respond in a timely manner to the report, since to do so would be inconsistent with that purpose. Id. Our Regulations specifically provide (as reflected in our standard protest acknowledgment notice) that we will assume the protester received the agency report no later than the scheduled due date as specified in the acknowledgment notice, unless otherwise advised by the protester, and also provide for our dismissal of the protest if we do not hear from the protester in a timely manner. 4 C.F.R. § 21.3(j).

Notwithstanding Fisons's alleged nonreceipt of our acknowledgment notice, Fisons had actual knowledge of the 10-day comment requirement. Our records show that Fisons filed a separate protest in our Office on September 7, 1993,¹ just a few days before the present protest was filed, and that we sent Fisons our standard acknowledgment letter, setting forth the 10-day comment requirement, at

¹Reference No. B-254787.

that time. Our records also show that the GAO attorney handling the earlier-filed protest spoke to a Fisons representative and explained that comments were to be filed within 10 working days after receipt of the contracting agency report. In any event, it has long been our position that since our Regulations are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive notice of their contents. See Applied Sys. Corp.--Recon., B-234159.2, Mar. 28, 1989, 89-1 CPD ¶ 319. A protester's professed lack of knowledge of our published Regulations is not a basis for waiving the requirements. Id.

The dismissal is affirmed.

Ronald Berger
Associate General Counsel